IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

MONDAY, THE 5TH NOVEMBER 2007 / 14TH KARTHIKA 1929

CRP.No. 634 of 2003()

AGAINST THE ORDER DATED 20/11/2002 IN
EP.27/1995 IN LAR.40/86 of SUB COURT,THODUPUZHA

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REVN. PETITIONERS: JUDGMENT DEBTOR

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1. STATE OF KERALA REPRESENTED BY THE
   DISTRICT COLLECTOR, IDUKKI.

2. THE WILD LIFE PRESERVATION OFFICER,
   PERIYAR TIGOR PROJECT, THEKKADY.

BY GOVERNMENT PLEADER SMT. R. BINDU

RESPONDENTS: DECREE HOLDERS

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1. K.A.A.RAJA, I.A.S. (RETIRED) FORMER
   LT.GOVERNOR OF ARUNACHAL PRADESH
   S/O. K.S.ALAYA RAJI PARASAKTHI T.P.MILLS ROAD,
   RAJAPALAYAM (DIED)

2. DR.K.A.RAMASUBRAMANIA RAJA,
   S/O. K.A.A.RAJA, IAS (RETD), PARASAKTHI,
   T.P.MILLS ROAD, RAJAPALAYAM.

3. K.A.VIVEKANANDA RAJA
   S/O. K.A.A.RAJA, IAS (RETIRED)
   PARASAKTHI, T.P.MILLS ROAD, RAJAPALAYAM.

4. M.J.GENERAL K.A.S. RAJA, PVSM(RETD)
   S/O. K.S.ALAYA RAJA CONGEYA SRIRENGAPALAYAM,
   RAJAPALAYAM.

5. K.S.VIJAIYAKUMAR RAJA,
S/O. MAJOR GENERAL K.A.S. RAJA, P.V.S.M.(RETD.)
CONGEYA SRIRENGAPALAYAM, RAJAPALAYAM.

6. K.P.JAYARAMA RAJA, S/O. PERUMAL RAJA,
RENGAVILAS, THENKASI ROAD, RAJAPALAYAM (DIED)

7. K.J.RAVICHANDRA RAJA
S/O. K.T.JAYARAMA RAJA, RENGAVILAS, THENKASI ROAD, RAJAPALAYAM.

8. K.R.SRIRENGA RAJA
S/O. K.S.RENGASAMI RAJA, RENGAVILAS, THENKASI ROAD, RAJAPALAYAM.

9. K.S.VELAYUDHA RAJA, S/O. SUBBHA RAJA,
RENGAVILAS, THENKASI ROAD, RAJAPALAYAM.

ADDL.10.RETHINAMMAL
W/O. LATE K.P.JAYARAMA RAJA, RENGAVILAS,
TENKASI ROAD, RAJAPALAYAM. (Died)

11. SANTHI D/O. LATE K.P.JAYARAMA RAJA,
OF DO. DO.

12. RAVICHANDRA RAJA
S/O. LATE K.P.JAYARAMA RAJA OF DO.DO.

13. VIDYA, D/O. LATE K.P.JAYARAMA RAJA,
OF DO. DO.

14. SRIRENGAPERUMAL RAJA
S/O. LATE K.P.JAYARAMA RAJA OF DO. DO.

It is recorded that respondents Nos.11 to 14 are the legal heirs of deceased 10th respondent as per order dt. 5.11.2007 as per memo filed on 23.1.2007

BY ADV. SRI.C.K.VIDYASAGAR FOR R1
SRI.T.I.ABDUL SALAM
SRI.T.SETHUMADHAVAN FOR R2 - R7
SRI.PUSHPARAJAN KODOTH
SRI.K.JAYESH MOHANKUMAR

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 05/11/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

Order on CMP 1568/03 in CRP 634 of 2003

Dismissed.

Sd/- M.N.KRISHNAN, JUDGE.

5/11/2007

M.N.Krishnan, J.

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C.R.P.No.634 of 2003

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Dated this the 5th day of November, 2007.

ORDER

This Civil Revision Petition is filed by the Government against the order of the Subordinate Judge, Thodupuzha in E.P.No.27 of 1995 in L.A.R.No.40 of 1986. The said order was pronounced on 20th November, 2002. The court below relied upon a statement filed by the decree holder on 1.11.2002 and submitted that no counter has been filed and as per the statement an amount of Rs.70,53,864.30 is due to the decree holder. Learned Government Pleader would submit that ultimately, the court after making some deductions arrived at the conclusion that an amount of Rs.70,46,625.28 is due to the decree holder as on 1.11.2002. Learned Government Pleader would also submit that there is strong objection for them in accepting the statement.

2. Learned counsel for the claimants had placed before me

the decision of the Apex Court in **K.A.A. Raja and Others** v. **State of Kerala and Another** - 1994 (5) Supreme court Cases 138, which has arisen from the very same subject matter and the Apex Court in paragraph 5 of the judgment had clearly found that what is the amount the claimants are entitled to and the entitlement with regard to the payment of the interest under Section 23(1-A) would depend upon the decisions to be rendered by the Constitution Bench and the party depending upon the judgment would work out that benefit also. Now as per the decision of the Apex Court in **Sundar** v. **Union of India** - (2001) 7 S.C.C. 211, the entitlement for interest on solatium was found in favour of the claimants. Subsequently, a Five Bench decision reported in **Gurpreet Singh** v. **Union of India** - (2006) 8 Supreme Court Cases 457 clarified the position thus: "We also clarify that interest on solatium can be claimed only in pending executions and not in closed executions and the execution court will be entitled to permit its recovery from the date of the judgment in **Sundar** (19-9-2001) and not for any prior period." This is also a matter which has to be looked into by the court below.

3. Therefore, I set aside the order of the Executing Court and remit back the same to the court below. The court below is directed to permit both the parties to file separate statement regarding their entitlement and the court below after considering the statement and the decisions of the Apex Court on the subject fix the amount and direct the Government to pay the balance so fixed. Being a very old matter, I direct the court below to complete the enquiry within a period of two months and the parties shall file their statements within a period of one month from today. Parties are directed to appear before the court below on 3.12.2007.

Writ Petition is disposed of accordingly.

M.N.Krishnan,
Judge.

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